

**PART I: BRITISH CITIZENSHIP**

**CHAPTER 6: GENERAL INFORMATION**

6.1 Introduction

6.1.1 This Chapter:

- gives general information about applications for British citizenship (otherwise than under the **British Nationality (Hong Kong) Acts 1990 and 1997**), British Overseas citizenship and British subject status and, where applicable, about applications made under the previous Nationality Acts; and
- explains certain procedures common to all applications; and
- gives guidance on dealing with problems common to all applications

6.1.2 The particular requirements, procedures and problems of applications for:

- British citizenship under the British Nationality Act 1981 are explained in **Chapters 7 - 13 and 15 - 18**
- British citizenship under **British Nationality (Falkland Islands) Act 1983, British Nationality (Hong Kong) Acts 1990 and 1997** and the **Hong Kong (Wives and Widows) Act 1996** are explained in **Chapter 14**
- British Overseas citizenship are explained in **Chapters 39 - 40**
- British subject status are explained in **Chapters 45 - 47**
- citizenship of the United Kingdom and Colonies are explained in the relevant Act and related guidance and instructions (see also **Chapter 14**)

6.1.3 General information about applications for British overseas

territories citizenship is contained in **Chapter 21** and particular requirements, procedures and problems in **Chapters 26 - 34**.

## 6.2 Regulations

6.2.1 The way in which the provisions of the British Nationality Act 1981, the **British Nationality (Falkland Islands) Act 1983**, the **Hong Kong (War Wives and Widows) Act 1996** and the **British Nationality (Hong Kong) Act 1997** are put into effect is set out in Regulations. These are Statutory Instruments made by the Home Secretary and approved by Parliament. They lay down such things as:

- how applications should be made
- to whom they should be made
- what information is required
- who should administer an oath or affirmation of allegiance
- what fee is payable

6.2.2 There are two types of Regulations:

- those dealing with the general handling of applications which are made under **s.41(1)** of the 1981 Act, and
- those dealing with fees - until 2 April 2007, these were made under **s.41(2)** of the 1981 Act; since 2 April 2007, these are made under **s.51** of the **Immigration, Asylum and Nationality Act 2006**

6.2.3 The Regulations presently in force are:

- **The British Nationality (General) Regulations 2003**, which came into operation on 1 April 2003
- **The British Nationality (General) (Amendment) Regulations) 2003**, which came into operation on 1 January 2004

- **The British Nationality (General) (Amendment) Regulations 2004**, which came into operation on 28 July 2004 and are only current for applications made on or after 28 July 2004
- **The British Nationality (General) (Amendment No.2) Regulations 2004**, which came into operation on 1 September 2004 and are only current for applications made on or after 28 July 2004
- **The Immigration and Nationality (Fees) Regulations 2009**, which came into operation on 6 April 2009
- **The Immigration and Nationality (Fees) (Amendment) Order 2009**, which came into operation on 6 April 2009
- **The Immigration and Nationality (Cost Recovery Fees) Regulations 2009**, which came into operation on 6 April 2009

6.2.4 Copies of these and previous regulations are held by the Nationality Policy Team (NPT).

### 6.3 Initial scrutiny of applications

#### 6.3.1 What is an application?

6.3.1.1 We must treat as an application any request for [British citizenship] which, together with accompanying documents appears to contain the applicant's:

- Full name
- Address
- Date and place of birth (unless on enquiry this cannot be supplied)
- A declaration stating that the contents are true

6.3.1.2 Applications made after 21 May 2007 must be accompanied by the appropriate fee and all applications must be made to the appropriate 'receiving authority' namely:

- i. the Home Secretary if, on the date of receipt, the applicant is in the UK;

- ii. the Lieutenant-Governor if, on the date of receipt, the applicant is in the Channel Islands or the Isle of Man;
- iii. the appropriate Governor if, on the date of receipt, the applicant is in a British overseas territory;
- iv. the High Commissioner if, on the date of receipt, the applicant is in a Commonwealth country - if there is no High Commissioner, the appropriate receiving authority is the Home Secretary;
- v. if the applicant is elsewhere, the "receiving authority" is any consular officer, established officer in the Diplomatic Service or any person authorised to accept nationality applications

6.3.1.3 It should be noted, however, that applications under **s.4(5)** or **s.5** of the 1981 Act and, before 21 May 2002, **s.2** of the **1983 Act** must always be made to the Governor of the relevant British overseas territory irrespective of where the applicant may be (see **Chapters 12, 13** and **14**, as appropriate).

6.3.1.4 It is not a statutory or regulatory requirement that the declaration is signed and dated, although Home Office forms provide space for this to be done. The declaration **must**, however, include either the full name or the signature of the person making the application. In most cases this will be the applicant but, as explained in 6.3.2 and 6.3.3 below, it may be a third party.

NB. For a trial period, special procedures apply in naturalisation cases if the applicant has failed to send in all of the relevant documents in support of the application. For a trial period, MMST will date stamp the application form and return it to the applicant at the outset, together with any fee paid and documents submitted.

6.3.2 Minor applicants

6.3.2.1 If the applicant is a minor, a parent or the person having responsibility for the child would normally make the application. There is nothing in law to prevent minors making their own applications but in such cases it may be necessary or desirable to have the consent of the parent(s) or responsible person(s).

6.3.3 Adult applicants

6.3.3.1 An adult will normally make his or her own application, but there are two sets of circumstances in which another person may apply on an adult's behalf:

- Where the applicant is not of full capacity
- Where the applicant is of full capacity but finds it more convenient to have an agent make the application

6.3.3.2 Whenever an application is made without the knowledge or agreement of an applicant who is of full capacity, it is deemed not to have been made.

6.3.4 What is the date of application?

6.3.4.1 The date of application is the date of its receipt by the appropriate "receiving authority", as explained in paragraph 6.3.1.2, prescribed by **paragraph 4** of the **British Nationality (General) Regulations 1982** and **2003**.

6.3.5 General handling of valid applications

6.3.5.1 If the application has been received in the Home Office more than 6 months after the date on which it is declared there is a possibility that the applicant's circumstances have changed. The form should therefore be returned to be re-declared to ensure that the information given is up to date.

6.3.5.2 Where a form has to be returned to the applicant with a request to provide additional information (i.e. other than in 6.3.1) and no response is received, we should proceed to determine the application by way of grant (if we are satisfied it would be right to do so) or by refusal in the manner outlined in 6.5.6 below.

6.3.5.3 Where a form or request is being treated as an application, has been recorded as intake and the correct fee has been paid (see 6.5.5 below), we should proceed to determine the application in accordance with the guidance and procedures. If:

- the application has been made under the British Nationality Act 1981 or the **British Nationality (Hong Kong) Act 1997** (see **Chapters 7-18, 39-40 or 45-47**, as appropriate)
- the application was made, or is being considered, under the **British Nationality Act 1948**, the **British Nationality (No.2) Act 1964**, the **British Nationality (Falkland Islands) Act 1983**, or the **British Nationality (War Wives and Widows) Act 1996** (see **Chapter 14**)

6.3.5.4 If the application was made, or is being considered under one of the other Nationality Acts, the related guidance and instructions should be used (i.e. Nationality Division Handbook of Instructions). Nationality Policy Team (NPT) may be consulted where sufficient guidance is not available.

#### 6.3.6 **Referees - Qualifications**

6.3.6.1 All applicants, except those seeking to renounce British nationality, are asked to provide two referees so that we can be satisfied about a person's identity. We would not routinely contact referees, but may do so on the authority of a senior caseworker if this could resolve any

concerns about the application.

6.3.6.2 For adult applications each referee should have known the applicant personally for at least 3 years.

6.3.6.3 One referee should be a person of professional standing, as per the list in Annex A.

6.3.6.4 The other referee must be the holder of a British citizen passport and either a professional person or over the age of 25.

6.3.6.5 Referees should not:

- be related to the applicant
- be related to the other referee
- be the applicant's solicitor or agent representing him or her with the application
- be employed by the Home Office
- have been convicted of an imprisonable offence during the past 10 years for which the sentence is not spent under the **Rehabilitation of Offenders Act 1974**.

6.3.6.6 If the applicant is living abroad and does not know a British citizen passport holder who is a professional person or over the age of 25, a Commonwealth citizen or citizen of the country in which he or she is residing may complete and sign the form, provided:

- he/she is over 25 or has a professional standing in that country, and

- has known the applicant for three years, and
- the Consul considers his/her signature to be acceptable

6.3.6.7 For a minor application one referee should be a person who has engaged with the child in a professional capacity, such as a doctor, teacher, health visitor, social worker or minister of religion. The other referee must be the holder of a British citizen passport, and either a professional person or over the age of 25.

#### Referees – Checks and enquiries

6.3.6.8 We may carry out checks on referees to ensure that the criteria in paragraph 6.3.6.5 are met.

6.3.6.9 If it is clear from any information we may have that a referee does not meet one or more of the criteria in paragraph 6.3.6, the applicant should be asked to provide an additional referee. This should be done by sending a REFEREE - ADDITIONAL letter and the appropriate guidance notes.

6.3.6.10 Referees are asked:

- how long they have known the applicant
- how, when and for what reason they met or meet the applicant
- to confirm whether, in their opinion, the applicant meets the statutory requirements other than the residence requirements
- to give any other information which they think should be taken into account in considering the application

6.3.6.11 If one of the referees does not reply within a reasonable period, consideration of the application

may proceed (to interview, if relevant) on the basis of one satisfactory reference if the application is satisfactory in all other respects. It is only necessary to invite the applicant to submit an alternative referee if:

- the referee who has replied is unwilling to act as a referee, or has cast doubts on the applicant's suitability for naturalisation; or
- where both referees prove to be unqualified or fail to respond

In such a case we should ask the applicant to provide an additional referee using the procedure above.

6.3.6.12 If no reply is received to the request for additional referees, or checks show that both of the new referees are unsuitable, the file should be referred to Senior Caseworker to consider referring for Police interview.

#### 6.3.7 **Photographs**

6.3.7.1 Applications should include a recent passport sized photograph which should be stapled or clipped into the space provided on the application form. The photograph should:

- show the whole of the front of the applicant's face in reasonable light
- not show the face wholly or partially concealed by hair (although beards, sideburns and moustaches are permitted) or by a scarf or traditional dress
- not show the applicant wearing dark glasses or a hat, hood or cap

6.3.7.2 When signing the application form the referees are also asked to declare that the picture provided is

a true likeness of the applicant.

## SPECIAL CASES

### Construing passport etc applications as applications for citizenship

6.3.8 Cases sometimes come to light where, due to official error, people have been consularly registered while ineligible for such registration or wrongly issued with British passports or certificates of entitlement to the right of abode. As a result they might have lost age- or time-limited entitlements to citizenship. So that they are not disadvantaged by the official error we should be ready in such cases to construe the application as an undetermined application for citizenship and process it accordingly.

6.3.9 This policy will not normally cover the holders of British Visitors passports which have been issued in error. It is intended primarily to benefit people who had, but no longer have, an avenue to registration under the minor or other registration provisions of the **British Nationality Act 1948** or the British Nationality Act 1981 and have been led to believe that they are British or have a UK right of abode. Although we should act reasonably in the circumstances of each individual case, the policy should not normally apply where:

- a realistic avenue to citizenship is still open, or
- at the time of the error, the person would clearly not have been eligible for the grant of citizenship (as would be the case, for instance, with an adult who was unable to meet the unwaivable requirements for naturalisation or registration)

but any discretion should normally be exercised in the person's favour.

6.3.10 The policy should not apply, either:

- where there is reason to believe that the passport, certificate of entitlement or consular birth registration was obtained by deception, or

- where the person could reasonably have known that no such claim existed.

6.3.11 It is important to note that if an application referred to in paragraph 6.3.8 above is to be construed as a citizenship application, it must have been received by the authority specified in the appropriate nationality regulations. In this connection it should be noted that:

- the Passport Office did not form part of the Home Office until 1 April 1984
- an application for registration as a CUKC under **s.6(2)** or **s.7(1)** of the **1948 Act** had to be made to the Home Secretary if the applicant was in a foreign country
- if a passport etc application is known to have been received but cannot now be traced and (if necessary) passed to the correct receiving authority, it will not be possible to treat it as a citizenship application.

#### Defective applications

6.3.12 There are three types of defective application in respect of which special procedures apply:

- a. An application which has been delivered to the correct authority with the appropriate fee but does not include all of the information listed in paragraph 6.3.1.1
- b. An application which includes all of the necessary information (see paragraph 6.3.1.1), but has not been "made" to the correct receiving authority as required by **s.50(8)** of the 1981 Act - e.g. an application which is received direct from an applicant who was abroad on the date of its receipt
- c. An application which has been delivered to the wrong authority but also does not include all of the information in paragraph 6.3.1.1

6.3.13 The common factor in all three types of defective application is the clear intention of the applicant to make a valid

application. However, the action we should take will depend on the nature of the defect.

A. Applications which are incomplete

6.3.14 In the type of case described in 6.3.12.a above, the applicant should be given the opportunity to make good the technical deficiency unless it is clear that the applicant does not meet an unwaivable requirement for registration or naturalisation (see 6.3.27 below).

6.3.15 This will have the effect of retrospectively validating the application, and the original date of receipt can be taken as the application date - this may be important where, for example, an incomplete **s.3(1)** application is received by the correct authority before the applicant's 18th birthday but is not fully completed until after the applicant has reached full age. Such an application would be treated as having been made while the applicant was a minor. It is therefore important that the date of receipt is recorded.

6.3.16 If the unwaivable requirements are met but discretion would have to be exercised over a waivable requirement, we should highlight the potential problem, leaving it to the applicant to decide whether to validate the application.

6.3.17 We should:

- record on NCID the date of receipt of the incomplete application form (as this date will remain the date of application); and
- place a copy of the form and any documents submitted on the file; and
- return the original form and documents to the applicant/agent asking for that information to be inserted - the opportunity should also be taken at this stage to remedy any other defects relating to the form or the declaration

If the application has not been made on a form, it may be simpler to send a form for completion.

- 6.3.18 The time scale for having the form properly completed should be one month. On receipt of the fully completed form, the application should be recorded as intake if a computer record has not already been created.
- 6.3.19 If no response is received within the given deadline, we should bring matters to a conclusion by writing to the applicant. The letter should NOT say that the application has been refused, rather that the application was not valid as the details that must be contained in all applications have not been given in full (as required by the **British Nationality (General) Regulations 2003**). Arrangements should be made to refund the total fee paid.

B. Applications made to the wrong authority

- 6.3.20 Where an applicant is abroad on the date the application is received in the Home Office, the application will not have been "made" to the correct receiving authority and should normally be rejected (see 6.3.1.2 above for details of receiving authorities).
- 6.3.21 The Managed Migration Support Team will raise and file track the Home Office file (placing a copy of the application form and supporting documents on the file) and record the application on NCID. The date of application will be shown as the date on which the form was received by the Border and Immigration Agency. The file will then be passed to the relevant casework team.
- 6.3.22 The procedure (with obvious adjustments - e.g. where the applicant has returned to the UK or the application was submitted via an agent in the UK) will then be as follows:
- a. the application will be "rejected" as invalid (noting the reasons on NCID); and
  - b. the original application form and any supporting documents submitted will be forwarded to the relevant Post, with a covering letter to explain that:
    - i. the applicant (or a minor included on the

application form) was outside the UK on the date the form was received by the Home Office; and

ii. the applicant should be advised that the application was invalid (as it was made to the wrong authority) and invited to re-submit the application to the Post together with the relevant documents and application fee if he/she wishes to become a British citizen; and

c. arrangements will be made for any fee paid in respect of the invalid application to be refunded either to the agent or Post abroad, as appropriate; and

d. if the application is re-submitted, the Post will process the application in the normal manner

#### Date of application

6.3.23 If the applicant decides to re-submit the application, the date of application will normally be the date on which the new application is received by the correct authority.

6.3.24 In limited circumstances, however, it may be reasonable to retrospectively validate an application submitted to us in error by a person who is overseas - for example:

- where an adult who is in the UK has correctly "made" an application to the Home Office, but has included on the application form a minor who was overseas on the date the form was received
- where the applicant appeared to be eligible for naturalisation or registration on the original date of receipt but, on the new application date, is no longer able to satisfy the requirements - e.g. because the application is subject to a specific deadline (such as a minor who is approaching 18) or because physical presence in the UK on a specific date is required
- where allocating a new application date for an individual application would mean that the applicant would no longer benefit from a particular fee concession (i.e. multiple

minor applications and joint applications for naturalisation)

6.3.25 If we decide to retrospectively validate the application we should simply copy the application form to the correct receiving authority with stock letter RETROSPECTIVE VALIDATION - it is not necessary to await a response from the Post before proceeding to consider the application. If the applicant lives in the Channel Islands or the Isle of Man, the application should be determined locally (see paragraph 6.12.3 below).

C. Applications that are both incomplete and made to the wrong authority

6.3.26 Where we receive an application which does not contain all the information mentioned in 6.3.1.1 above **and** was received direct from an applicant who is overseas on the date of receipt, the application should be considered in accordance with the guidelines outlined in 6.3.20 - 6.3.25 above.

Defective applications which should not be returned for retrospective validation

6.3.27 Where we receive a form or request which is defective and it is clear that the applicant does not meet an unwaivable requirement for registration or naturalisation, we should NOT take steps to put right the defect. Instead, the applicant should be advised that the form/request does not constitute a valid application. Arrangements should be made to refund the fee paid in full.

6.3.28 If appropriate, the applicant's attention should be drawn particularly to the unfulfilled requirements and, if the applicant fails to satisfy a requirement where we have some discretion (e.g. the residence requirements for naturalisation) he or she should be advised, when re-applying, to make a case why we should exercise discretion to waive that requirement.

6.3.29 In addition, we should inform a prospective applicant if it is known that there is to be a fee change in the near future, or if delay in submitting a fresh application may cause a problem

(e.g. a minor who is close to age 18).

Unnecessary applications

6.3.30 Applications made by, or on behalf of, persons who have an automatic claim to British citizenship at the date of application (which can include minors whose birth is retrospectively legitimated by the subsequent marriage of their parents before the application is determined) should be treated as a written request for confirmation of status. These should be considered in accordance with the procedures set out in **Chapters 2-5, 37-38 and 43-44**. The total fee paid (if any) should normally be refunded (see 6.5.10 below). NB. Since the introduction on 6 April 2009 of additional fees for minors (where an application is made for more than one minor at the same time), only the "extra" fee would be refunded - unless **all** the minors had an automatic claim to citizenship.

Where it is clear that minors included on a parent's application are already British citizens no computer record should be created for their "applications" and they should not be noted as intake. In all other cases, a computer record should be created and the applications should be noted as intake.

6.4 Application forms

6.4.1 An application for British citizenship etc is normally made on a form which has been specifically designed to suit the circumstances of the applicant. Their titles give an indication of the purpose of each form.

6.4.2 A list of the forms used for British citizenship is as follows:

Form AN	Application for naturalisation as a British citizen - <b>s.6</b>
Form B(OS)	Application for registration as a British citizen by British Overseas territories citizens, British subjects and British protected persons - <b>s.4B</b>

Form B (OTA)	Application for registration as a British citizen by British overseas territories citizens, British Nationals (Overseas), British Overseas citizens, British subjects and British protected persons - <b>ss.4</b> and <b>4A</b>
Form EM	Application for registration as a British citizen under the <b>British Nationality (Hong Kong) Act 1997</b>
Form F1	Application for registration as a British citizen by certain British Dependent Territories citizens connected with the Falkland Islands - <b>s.2(1) British Nationality (Falkland Islands) Act 1983</b> - NB. This form became obsolete on 21 May 2002
Form F2	Application for registration as a British citizen by certain British Dependent Territories citizens connected with the Falkland Islands - <b>s.2(2) British Nationality (Falkland Islands) Act 1983</b> - NB. This form became obsolete on 21 May 2002
Form G	Application for registration as a British citizen by a British overseas territories citizen who is a United Kingdom national for EC purposes - <b>s.5</b> . Only applies to Gibraltarians
Form MN1	Application for the registration of a minor as a British citizen - <b>ss.1(3), 3(1), 3(2), 3(5)</b>
Form RS1	Application for registration as a British citizen by a person who either: <ul style="list-style-type: none"> <li>• renounced citizenship of the United Kingdom and Colonies before 1 January 1983 - <b>s.10</b>; <u>or</u></li> <li>• renounced British citizenship - <b>s.13</b></li> </ul>

Form S1                    Application for registration by a stateless person who had an entitlement to registration under the **British Nationality (No 2) Act 1964 - paragraph 5, Schedule 2**. This application covers British citizenship, British overseas territories citizenship and British Overseas citizenship since it will only be evident from the information on the form which citizenship will be granted

Form S2                    Application for registration on grounds of residence by a stateless person who was born on or after 1 January 1983 outside the United Kingdom and the British overseas territories - **paragraph 4, Schedule 2**. This application covers British citizenship, British overseas territories citizenship, British Overseas citizenship and British subject status since it will only be evident from the information on the form which citizenship or status will be granted

Form S3                    Application for registration on grounds of residence by a stateless person who was born on or after 1 January 1983 in the United Kingdom or a British overseas territory - **paragraph 3, Schedule 2**. This application covers British citizenship and British overseas territories citizenship since it will only be apparent from the information on the form which citizenship will be granted

Form T                     Application for registration as a British citizen on grounds of residence by a person aged ten or more, born in the United Kingdom on or after 1 January 1983 - **s.1(4)**

Form UKM                 Application for registration as a British citizen by certain adult children of British mothers - **s.4C**

Form WW                 Application for registration as a British citizen under the **Hong Kong (War Wives and**

## Widows) Act 1996

- 6.4.3 Descriptions of the application forms for British overseas territories citizenship, British Overseas citizenship and British subject status may be found in the relevant Chapters. A list of the forms in use under the previous Nationality Acts immediately before 1.1.83 is at Annex C.
- 6.4.4 These forms have no statutory basis and their use is not compulsory.
- 6.4.5 Applicants may use photocopies of our forms on which to make their application. We do not, however, accept copies of completed forms as the declaration, at least, must be in the original. Applications made by fax or e-mail should not be encouraged but (since the date of an application is sometimes critical) may be accepted provided that the original application form or letter is subsequently received. NB. In order to satisfy the requirement for applications to be accompanied by the appropriate fee, applicants who wish to make their applications by fax or e-mail on or after 21 May 2007 **must** provide their credit/debit card details.
- 6.4.6 All cases should be considered with the aim of using the most convenient avenue to the citizenship or status being sought. But care should be taken to ensure, wherever possible, that the applicant benefits from any entitlement and/or a provision which would give British citizenship otherwise than by descent (see **Chapter 20**). If, as a result, a higher fee is payable a proposal to consider an application under a different provision should be explained to the applicant who should be invited to agree and pay the balance of the fee.
- 6.4.7 If an application on a form other than that normally used is accepted, the original title of the form (e.g. Form B) should be struck out and the form marked in the top centre (e.g. "Treat as Form AN") and the computer record updated.

### 6.5 Application fees

6.5.1 General points to note are:

- The fee payable is that in force at the date of application

- Before 30 October 1981, the non-payment of the fee did not invalidate registration or the grant of a certificate of naturalisation
- Before 1 April 1982, the fee was payable only by those whose applications were to be approved
- From 1 April 1982, the full fee has been payable by all applicants when the application is made (but see 6.5.6 below)
- From 1 April 1982 to 31 March 1984, the full fee was refunded to unsuccessful applicants
- From 1 April 1984 to 31 March 1996:
  - i. a separate application and registration or naturalisation fee was payable; and
  - ii. only the registration or naturalisation fee would be returned to unsuccessful applicants
- From 1 April 1996 to 31 December 2003, only one fee was payable for the application and no refund was given for a refused or withdrawn application
- From 1 January 2004:
  - i. a separate application and, if applicable, citizenship ceremony fee is payable; and
  - ii. only the citizenship ceremony fee, if applicable, is returned to unsuccessful applicants
- From 2 April 2007, an application for registration or naturalisation (but not a declaration of renunciation) will be invalid if it is not accompanied by the prescribed fee
- From 6 April 2009, where an application is made for more than one minor child of the same parents, a separate fee

is payable for each additional child

6.5.2 The current Fees Regulations prescribe the fees payable for the making of any application to the Home Secretary for:

- registration as a British citizen, British overseas territories citizen, British Overseas citizen or a British subject
- naturalisation as a British citizen or British overseas territories citizen
- renunciation

6.5.3 The fees for making an application for registration or naturalisation are set out in the Table of Fees in the appropriate Regulations (see 6.2.3 and 6.2.4 above). For ease of reference details of the fees payable since April 1975 are reproduced at Annex D. In the unlikely event of having to approve an application made before April 1975 consult Nationality Policy Team.

6.5.4 **Applications received with incorrect fee**

Applications made before 2 April 2007

6.5.4.1 If no fee or only a part fee has been paid, the Acknowledgement letter produced by the fee system will ask for the full fee or the balance of the fee as required. The applicant will be asked to reply within one month.

6.5.4.2 If the fee has been paid by cheque or credit/debit card and payment has been rejected, MMST will write to the applicant and ask for the fee to be paid within 1 week.

6.5.4.3 If there is no reply, the applicant will be told that the Home Secretary cannot register or naturalise (whichever is appropriate) someone when the full fee has not been paid. If:

- the application is for registration at

entitlement, nothing further will be added (i.e. we should not say that the application is refused)

- the application is under a discretionary provision, the applicant will be told that the application has therefore been refused and a fresh application will be needed

#### Applications made on or after 2 April 2007

6.5.4.4 If an application for registration or naturalisation is received on or after 2 April 2007 and before 21 May 2007, and the correct fee has not been enclosed with the application, MMST will write to the applicant to request payment of the correct amount. The applicant will be given 21 days to respond. If the applicant fails to reply within that time, the application will be rejected as invalid and the application form, supporting documents and any fee paid will be returned to the applicant/agent.

6.5.4.5 Any application for registration or naturalisation received on or after 21 May 2007 will be immediately rejected as being invalid if the correct fee has not been enclosed with the application - i.e. no request for payment of the fee or balance of fee will be made.

#### Joint applications for naturalisation

6.5.5 Where a husband and wife/civil partners apply at the same time for the grant of certificates of naturalisation and are residing together at the time of the applications, the total application fee to be paid is the same as for one application. However, where they have applied on or after 1 January 2004, they would need to pay separate fees in respect of their citizenship ceremony.

#### Minor children (under 18 years of age)

6.5.6 Before 6 April 2009, where applications were made under the

1981 Act\* at the same time for the registration of more than one minor child of the same parent\*\*, either by inclusion in the parent's application or on separate application forms, only one fee is payable for the children. But if the applications were under **ss.9, 21 or 27(2)** and registration was effected in the United Kingdom, only the application fee was payable - there was no registration fee.

Where an application is made on or after 6 April 2009 for more than one minor child of the same parent\*\*, a further application fee is payable for each additional child.

\* See Annex D for the fees payable for the registration of minors under the previous Nationality Acts.

\*\* For this purpose, 'parent' includes a step-parent (i.e. the spouse or civil partner of either natural parent) and an adoptive parent.

#### Acquisition of British overseas territories citizenship

6.5.7 The registration or naturalisation of a person as a British overseas territories citizen will normally be effected in the British overseas territory with which the applicant is connected. In such a case, the fee payable will depend on the fee charged in the British overseas territory concerned. For the procedure to be followed see **Chapter 21**.

#### Refunds

6.5.8 Fees can be refunded if an application is unsuccessful provided the application was made before 1 April 1996 or on or after 1 January 2004 (see 6.5.1 above). Normally, the application fee is retained and only the registration/grant or citizenship ceremony fee is refunded. But in limited circumstances, the total fee may be refunded (e.g. where the application was unnecessary - see 6.3.30 above). Any excess fee paid in a successful case can also be refunded.

6.5.9 The procedures for making a refund vary according to whether the application was made in the United Kingdom or abroad and where the applicant is living at the time it is proposed to make the refund.

### Refunds to third parties

6.5.10 A refund should normally be paid to the person who paid the fee. If a third party has paid the fee, and requests a refund before the application has been completed, we should satisfy ourselves that the third party did, in fact, pay the fee and then refund any registration/grant and/or citizenship ceremony element of the fee, writing to explain that the application fee is non-refundable and is being retained.

6.5.11 Unless it is clear that the third party is acting as the applicant's agent, and there is a written request to withdraw the application, proceed as in 6.5.4 above indicating to the applicant that the registration/grant/citizenship ceremony fee has been refunded to the person who paid it and inviting the applicant to pay the balance.

NB: a. No refunds will be made for refused or withdrawn applications received on or after 1 April 1996 and before 1 January 2004.

b. Only the citizenship ceremony element of the fee is refunded for refused or withdrawn applications made on or after 1 January 2004.

### Transfer of fee to another application

6.5.12 Occasionally, we are asked to apply money received for one application to another. In these circumstances, we should ensure that authorisation to divert a fee is given by the person who paid it. Assurances from a third party are not sufficient. If any such transfer of funds is agreed, it should be remembered that an amount equivalent to the application fee on the original application cannot be transferred.

### Misappropriation of application fees

6.5.13 If the applicant states, following a fee request, that the fee was submitted with the application or subsequently, the file should be referred to the Managed Migration Support Team to make further enquiries. If misappropriation is considered to

be a possibility, the case will be passed to the Agency's Security Officer who will decide whether the matter should be reported to the police.

6.5.14 Where it is suspected that a fee has been misappropriated, and a Casework Team considers that the applicant should not be asked to submit a further fee, the file should be minuted by a manager with a summary of the circumstances and sent to Finance Section who will consider whether to waive the fee.

#### Misappropriation of fee refunds

6.5.15 Refunds of fees are made by means of payable orders which are endorsed "not negotiable". This means that a person other than the payee should not receive value for it but this sometimes happens.

6.5.16 The Home Office policy on misappropriated payable orders is:

- to issue a further payment to the correct payee; and
- to report the circumstances to the police; and
- if possible, to obtain recompense for the loss

6.5.17 Accounts and Finance Unit are responsible for implementing this policy and have asked that any case where misappropriation is known to have taken place or is suspected should be brought to their attention immediately. Prompt action is essential, to assist police enquiries and any subsequent claim by the department. The file should be minuted by a manager with a summary of the circumstances and sent to Finance Section.

#### Ex gratia payments

6.5.18 In certain limited circumstances it is possible to refund the fee or part of the fee after a person has been registered or naturalised or to pay compensation for hardship or loss caused by official error. These are called ex gratia payments. Guidance on the circumstances in which such payments can be made and the procedures to follow are set out in **Chapter 56**.

## 6.6 Determination of applications

6.6.1 If an application has been made, we must determine it either by grant or refusal. An application must not be treated as abandoned as there is no statutory authority for such a decision. An application may be determined by:

- grant of citizenship once all the formalities are completed (including receipt of the fee and attending a citizenship ceremony and/or making an oath/pledge if necessary) and a certificate issued; or
- refusal by sending a letter to the applicant's/agent's last known address (or, if there is no address, leaving a refusal letter on file - see 6.7.7 below)

### Determination by grant - oath cases

6.6.2 Where it appears appropriate to grant an application made before 1 January 2004, and an oath or affirmation of allegiance is required, the applicant/agent should be told that the Secretary of State proposes to grant the application and that a certificate of [British] citizenship may be issued provided that an oath or affirmation is taken in due form within the statutory period of 3 months (see 6.11.8 and 6.11.29 below). In cases where an oath or affirmation is required, the letter accompanying it constitutes provisional notification of the decision to grant. The oath should be sent to the last known address even if the applicant or agent is believed to have moved. Where there is no last known address no oath should be sent. The file should be minuted to the effect that the application is undecided but refusal action should be taken on computer.

6.6.3 Where it has been decided to grant an application made on or after 1 January 2004, and the applicant needs to attend a citizenship ceremony to make the oath and pledge, we should issue a "ceremony invitation" letter and advise the applicant to contact the relevant local authority in order to arrange attendance at a citizenship ceremony within 3 months to make the oath of allegiance and pledge (see 6.11 below). The letter should be sent to the last known address even if the applicant or agent is believed to have moved. Where there is

no last known address, no letter should be sent. The file should be minuted to the effect that the application is undecided but refusal action should be taken on computer.

6.6.4 In cases requiring an oath of allegiance, or citizenship ceremony (in the case of applications made on or after 1 January 2004), we would not normally change the decision to grant except in very restrictive circumstances. An exception is where the oath/ceremony invitation has been sent out in error, either because it has been sent to the wrong applicant or because no consideration has been given to the application. In such cases, we should write to explain the mistake, tell the applicant to disregard the "decision" and consider the application in the normal way. Otherwise, if, following the despatch of the oath form/ceremony invitation, material and significant information comes to light which:

- would justify immediate action being taken under **s.40** of the British Nationality Act 1981 to deprive the applicant of any citizenship granted; or
- would justify treating the proposed grant of citizenship as a nullity (see **Chapter 55**); or
- was not already in our possession and leads us to conclude that an applicant clearly does not meet one of the unwaivable statutory requirements or pre-conditions (or in the case of a discretionary registration provision, is not of good character); or
- would make proceeding with the grant of citizenship likely to cause widespread adverse publicity, bringing the citizenship process into disrepute,

the papers should be considered with a view to refusal. If, in the case of applications made before 1 January 2004, the adverse information has come to light before a reminder letter has been despatched, the reminder letter should not be sent. Cases where it is decided to refuse an application following the issue of an oath of allegiance should, on completion, be referred to NPT for noting.

6.6.5 In the case of applications made on or after 1 January 2004,

we should:

- notify the applicant/agent that we are proposing to reverse the decision to grant the application; and
- arrange for the Citizenship Ceremonies Support Team to recall the certificate from the relevant local authority or authorised person

NB. Re-consideration of the decision should be taken at Senior Caseworker level

#### Determination by grant - non-oath cases

6.6.6 When no oath or affirmation is required, the issue of the certificate to the applicant/agent constitutes notification of the decision to grant the application. If the applicant/agent is in the UK the certificate ought normally to be sent to the last known address.

6.6.7 In non-oath cases we should NOT send certificates of registration or naturalisation to an applicant/agent's address if it is clear that the address is no longer current and we have been unable to establish the applicant/agent's whereabouts. Instead (if a complete address exists), a letter should be sent inviting the applicant/agent to contact us and to claim the certificate. If no reply is received or there is no complete address the file should be laid by.

6.6.8 If we grant an application for registration or naturalisation, and it subsequently comes to light that citizenship may have been obtained by means of fraud, false representation or concealment of a material fact, there may be grounds for deprivation proceedings under **s.40** or for regarding the grant as null and void. If so, the procedure in **Chapter 55** should be followed.

#### Enquiries necessary to determine an application

6.6.9 To assist in determining an application, it may be necessary to obtain further information. This may be done by speaking to the applicant on the telephone, asking the applicant to attend an interview and/or requesting the applicant to send us

information or documents (e.g. passports etc).

#### Applicants failing to respond to enquiries

- 6.6.10 We must always ensure that we have given the applicant/agent a reasonable opportunity to respond to our enquiries, but applications should not be allowed to drag on indefinitely. Refusal action (see 6.7 below) should normally be taken if we are satisfied that the request has been sent to the correct address and sufficient time allowed for a reply.
- 6.6.11 The time we allow for a response will depend on the individual circumstances, but only in exceptional cases should we allow the applicant more than 1 month either to respond to our request or to give us a reason why more time is required. The file should be almanacked for an appropriate period. We should make clear that if we receive no reply we shall consider the application on the basis of the information at present before us.
- 6.6.12 If no reply is received, we should consider whether there are grounds to send a reminder (for which SCW approval should be obtained). If no grounds exist, we should determine the application either by grant or refusal.

### 6.7 Refusals

#### Wording of decision letters

- 6.7.1 Where an entitlement to registration exists, although the applicant has been unable to demonstrate it, we cannot say that the Secretary of State is refusing registration, rather that he is unable to register the applicant. Further action may be possible at a later date (see paragraph 6.8.3 below). In naturalisation and discretionary registration cases, the letter to the applicant/agent should make it clear that the application has been refused.
- 6.7.2 Where we decide to refuse an application for naturalisation or registration at discretion, we must tell applicants in an unambiguous way, leaving them in no doubt. The refusal letter will normally include a phrase like "the application(s)....by....is/are refused".

N.B. Phrases such as "unable to proceed with" or "not willing to consider your application further" should not be used.

- 6.7.3 In dealing with enquiries about a possible future application, we must not use phrases which suggest that an application will not be considered. We should not therefore use phrases like "the Secretary of State would not be prepared to entertain/consider an application". Where we wish to advise an applicant that an application will probably be unsuccessful, it should always be made clear that he or she is not debarred from making an application, and that any application that is made will be considered in the light of all the relevant circumstances at the time.

#### Notification action

- 6.7.4 Where the applicant's/agent's address is known, the refusal letter and any documents to be returned should be sent to that address and a refund authorised, if appropriate.
- 6.7.5 Where the applicant's/agent's last known address is on file, but current whereabouts are unknown, the letter (not enclosing any documents belonging to the applicant) should be sent to the applicant's/agent's last known address. This should invite any refund due and any documents to be claimed in writing with supporting proof of identity or of authority to act for the applicant. The file should be almanacked for 1 month to await a response and laid by if there has been none.
- 6.7.6 In ALL cases, a copy of the refusal letter should be placed on the file as a record of the reasons for the decision, the date the application was refused, and the address to which the notification of the decision was sent.
- 6.7.7 In some instances we may not have a last known address for the applicant or his agent, for example because an application form has been returned for proper completion without a copy or note of the applicant's/agent's address being retained on file, or correspondence has been returned by the Post Office because the address given by the applicant/agent was incomplete or does not exist. In these circumstances, a signed and dated refusal letter may be placed on file. No

arrangements should be made to refund any part of the fee due to the applicant or return any documents unless he or she subsequently contacts us.

6.7.8 If action has been started on the computer to approve an application but we have lost touch with the applicant and now want to refuse the application on the computer records, the file should be referred to the Citizenship Ceremonies Support Team with a written explanation of what is required. Where this has not been started, and we now wish to refuse because of lost contact, the Caseworking teams should take the necessary computer action themselves.

#### Disposal of documents

6.7.9 If we are unable to return documents, such as certificates of registration or naturalisation, passports, birth or marriage certificates, civil partnership certificates to applicants either because their whereabouts are unknown or the documents have been returned to us undelivered, we should:

- place the documents in a properly secured and sealed passport envelope with a note attached to it as the top document on the right hand side of the file; and
- minute the file to the effect that the documents are intended to remain on file; and
- pin a "PASSPORT ENCLOSED" tag to the front of the file; and
- lay the file by with the documents on it

#### Returned fee refunds

6.7.10 If, following refusal action, a payable order for a fee refund is returned uncashed, and the applicant/agent cannot be traced, the payable order should be sent, on file, to Finance Section for cancellation.

### 6.8 Reconsideration of applications

6.8.1 A decision must be valid (i.e. taken in accordance with both law and prevailing policy).

6.8.2 If:

- a. we have been unable to grant an application because:
  - i. the fee has not been paid (see 6.5.4 above); or
  - ii. an oath or affirmation of allegiance has not been taken (see 6.11 below); or
  - iii. the applicant has not attended a citizenship ceremony (see 6.11 below); or
- b. we have refused an application because either:
  - i. we made a mistake on the facts or in handling the papers; or
  - ii. we had insufficient information; or
- c. we have previously postponed a decision or treated an application as abandoned; or
- d. a refusal decision is reversed; or
- e. following judicial review, a court decides our decision to refuse (or abandon) an application was unlawful, improper or unreasonable,

the action we take will depend on whether the application was made on the basis of an entitlement or at discretion.

#### Entitlement

6.8.3 A person should always be seen to benefit from a right to citizenship rather than be granted citizenship at the Home Secretary's discretion. An entitlement exists at the date of application and, if we are now satisfied that the relevant requirements were then met, the applicant can be granted citizenship on the basis of the original application. There is no need to invite a fresh application. Indeed, this may no longer be possible either because of a change in the law or because the applicant is no longer eligible.

- 6.8.4 If, however, a fresh application has been made (either at entitlement or at discretion but which can be treated as at entitlement) and the applicant is not expected to meet additional requirements and/or pay a fee or additional fee, citizenship may be granted on the basis of the new application.
- 6.8.5 If the case falls into 6.8.2.a.i or ii above, and the fee has now been paid or a completed oath has now been returned, grant action should be completed. In the case of applications falling into 6.8.2.a.iii, where an applicant is able/prepared to attend the necessary citizenship ceremony, we should:
- a. request the appropriate balance of fee in respect of the ceremony payable at the date the application was made; and on receipt of the payment
  - b. follow the procedure outlined in 6.11.21 below
- 6.8.6 If the case falls into 6.8.2.b - e. above, we should:
- record the application as additional intake; and
  - if necessary, write and ask if the applicant wishes to proceed with the application. If not, the application should be treated as withdrawn (see 6.11 below); and/or
  - if necessary, request the appropriate balance of the fee applicable at the date the application was made (less the application fee if this was retained) (see 6.5.4 above); and/or
  - if necessary, request an oath of allegiance to be taken or, in the case of applications made on or after 1 January 2004, invite the applicant to attend a citizenship ceremony to make an oath of allegiance/pledge (see 6.11 below); and
  - on receipt of the fee/oath/confirmation of attendance at a citizenship ceremony, complete the computer action
- 6.8.7 If the application falls into 6.8.2.c above and is to be

refused we should:

- record the application as additional intake; and
- complete the refusal action

### Discretion

6.8.8 An application at discretion, which has been refused, cannot normally be reconsidered. The exceptions are where we accept that invalid decisions were taken because we misapplied the law or our policy; or where a decision has been successfully challenged at judicial review. In order to agree to re-open a case (other than following a successful judicial review application), it is not necessary to conclude that we would have granted it, merely that we should not have refused it at the stage we did or for the reasons we did. It is not possible to describe all the circumstances which may lead us to conclude that a case falls into the first category. However, some of the more common examples are where:

- an application has been decided against irrelevant statutory requirements and/or grant criteria (more than just a clumsily-worded refusal letter would be needed to establish this)
- an application has been refused for lack of a response to enquiries when a response had been received but not linked with the application
- an application has been refused prematurely - i.e. without allowing sufficient time for a response
- an application was refused for failing to respond to enquiries or failing to arrange a citizenship ceremony but we are satisfied either that the applicant was genuinely unaware of the enquiries or ceremony notification (for example, had not seen or received an information/documents request letter or ceremony invitation letter due to an absence or illness or some failure on the part of the agent) or that, although the applicant was aware of the enquiries/notification, the lack of response was due to

some failure on the part of an agent

- an application was refused on character grounds due to a criminal conviction which was either later quashed on appeal or involved a case of mistaken identity (i.e. the applicant was not the person convicted of the offence)
- we have failed to take account of relevant documents or information in our possession

6.8.9 If it is decided that the original application can be reconsidered, this must be done in accordance with the guidance and procedures set out in **Chapters 7-18, 39-40 and 45-47**, as appropriate, if the application was made under the 1981 Act. If the application was made under other nationality legislation, the related guidance and instructions should be used (NPT may be consulted where sufficient guidance is not contained in **Chapter 14**).

6.8.10 The appropriate actions in 6.8.6 should also be taken if it is now intended to grant the original application (and those in 6.8.7 if it is decided to maintain refusal for a "valid" reason).

6.8.11 If such a case comes to notice as the result of a fresh application (and this is not made at entitlement - see 6.8.4) and it is intended to grant the original application, it will be necessary to formally determine the fresh application by taking the appropriate action on the file and the computer and refund any surplus fee. If it is intended to maintain refusal of the original application, the fresh application should be considered and determined in the normal way.

6.8.12 In all other cases where our decision is challenged we should consider whether a fresh application (not necessarily under the same provision - e.g. a **s.3(1)** applicant may now be an adult and have to apply for naturalisation) would be likely to succeed. If so, we should:

- invite a fresh application under an appropriate provision (unless one has already been made); and
- ask for the current fee to be paid; and

- if the original application could have been granted but for a mistake for which we were responsible, we should also:

- i. give priority to the new application; and
- ii. consider whether the applicant qualifies for an ex gratia payment of the fee and/or a compensation payment (see **Chapter 56**).

6.8.13 An application at discretion which falls into 6.8.2.c above but which comes to attention (for whatever reason) should be determined by being granted or refused. We should, therefore, proceed as in 6.8.6 or 6.8.7 above, as appropriate.

#### 6.9 Representations against refusal

6.9.1 RESTRICTED - NOT AVAILABLE FOR DISCLOSURE

6.9.2 RESTRICTED - NOT AVAILABLE FOR DISCLOSURE

6.9.3 RESTRICTED - NOT AVAILABLE FOR DISCLOSURE

6.9.4 RESTRICTED - NOT AVAILABLE FOR DISCLOSURE

6.9.5 RESTRICTED - NOT AVAILABLE FOR DISCLOSURE

6.9.6 RESTRICTED - NOT AVAILABLE FOR DISCLOSURE

6.9.7 RESTRICTED - NOT AVAILABLE FOR DISCLOSURE

6.9.8 Any trends in reconsideration letters received from practitioners that make no reference to nationality law or prevailing policy or that otherwise justify complaint to the OISC or Law Society will be followed up.

#### 6.10 Withdrawal of applications

6.10.1 The law makes no provision for applications to be withdrawn. But for administrative purposes we may regard an application as withdrawn upon receipt of a clear written statement signed by the applicant, or a parent or responsible person who has declared a minor's application form, that he or she does not

wish to continue with it. A letter of withdrawal from an applicant's spouse/civil partner or agent should not be accepted on its own. In such cases, the fee, less the application fee, should be returned. Applications should not be treated as withdrawn in any other circumstances, but should be determined in the normal way.

NB: No refund, other than a refund of the ceremony fee, will be given for the withdrawal of an application received on or after 1 April 1996.

## 6.11 The oath and pledge

### A. Applications for British citizenship made before 1 January 2004

6.11.1 **Section 42(1)(ii)** of the 1981 Act provides that no one who needs to take an oath of allegiance can be registered or granted a certificate of naturalisation on the basis of an application made on or after 1.1.83 unless they have taken an oath in the prescribed form and time. As an alternative to the oath, applicants may make an affirmation of allegiance (and references below to "oath" include references to "affirmation").

6.11.2 **Section 42(2)** of the 1981 Act explains who is not required to take an oath of allegiance. These are:

a. those not of full age; or

b. those who are already:

- British citizens; or
- British overseas territories citizens; or
- British Nationals (Overseas); or
- British Overseas citizens; or
- British subjects under the 1981 Act; or
- citizens of any country of which Her Majesty is Queen (see 6.11.3 below)

Everyone else, including British protected persons, must take an oath of allegiance before they can become British citizens.

6.11.3 Countries whose governments recognise the Queen as Head of State are:

Antigua and Barbuda, Australia, the Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, St Christopher and Nevis, St Lucia, St Vincent and the Grenadines, Solomon Islands and Tuvalu.

Citizens of these countries do not need to take an oath of allegiance.

6.11.4 An oath is conditional as it is taken before a certificate of registration or naturalisation is issued. The form of an oath of allegiance is given in **Schedule 5** to the 1981 Act and is set out below (see also "**OATH OF ALLEGIANCE**" in Volume 2).

"I, AB, swear by Almighty God that, on becoming a [British citizen], I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law".

6.11.5 For applicants who wish to affirm rather than swear their allegiance, the form of an oath is changed by removal of the words ".... swear by Almighty God ...." and the substitution of ".... do solemnly and sincerely affirm ...."

6.11.6 A computer form OA5 is normally used to request the applicant to take an oath of allegiance. A stock letter OATH REQUEST and oath form should be used when the request is to be prepared manually.

6.11.7 An oath of allegiance must be administered and signed by one of the following persons:

- In England, Wales or Northern Ireland - any justice of the peace, commissioner for oaths or notary public. (Barristers, except in Northern Ireland, and practising solicitors have the powers of commissioners for oaths)

NB. A solicitor who is acting for the applicant in connection with the application is not empowered to administer an oath unless also a notary public.

- In Scotland - any sheriff principal, sheriff, justice of the peace or notary public (a practising solicitor may also be a notary public)
- In the Channel Islands, the Isle of Man or any British overseas territory - any judge of any court of civil or criminal jurisdiction, any justice of the peace or magistrate, or any person for the time being authorised by the law of the place where the applicant, declarant or deponent is, to administer an oath for any judicial or other legal purpose
- In any country mentioned in 6.11.3 above of which Her Majesty is Queen, or in any territory administered by the government of any such country - any person for the time being authorised by the law of the place where the deponent is, to administer an oath for judicial or other legal purpose, any consular officer or any established officer of the Diplomatic Service of Her Majesty's Government in the United Kingdom
- Elsewhere - any consular officer, any established officer of the Diplomatic Service of Her Majesty's Government in the United Kingdom or any person authorised by the Secretary of State in that behalf
- If the deponent is serving in Her Majesty's naval, military or air forces, an oath may be administered by any officer holding a commission in any of those forces, whether the oath is taken in the United Kingdom or elsewhere

NB. For more detailed information about who can administer an oath of allegiance, see "OATH OF ALLEGIANCE" in Volume 2.

6.11.8 Where an applicant is required to take an oath of allegiance he must normally do so within the time limit of 3 months prescribed by the **British Nationality (General) Regulations 1982** (or the **British Nationality (General) Regulations) 2003**, as appropriate). Otherwise the applicant cannot be registered or naturalised unless the Home Secretary decides to extend the period.

- 6.11.9 When a request for the taking of an oath of allegiance has been sent, the file should be almanacked for 1 month and a reminder letter (OATH-REMINDER) sent with a new oath form if the original oath form has not then been received. The letter makes it clear that an oath should have been taken within 3 months and allows a further two months for it to be completed and returned. The file should be almanacked for 2 months.
- 6.11.10 If the applicant asks for an extension of time and gives an acceptable reason (e.g. a serious illness), an extension of up to 3 months may be allowed (or whatever longer period may be justified by the reason given for the request).
- 6.11.11 If an oath is returned undelivered, or not returned within 3 months of the original request, the applicant should be informed that it will not be possible for him or her to become a [British] citizen because the Home Secretary is not able to register or naturalise a person who has not taken an oath. Stock letter OATH REFUSAL (NON RECEIPT) should be used.
- 6.11.12 If the applicant still wishes to become a [British] citizen, and had an entitlement at the date of application, we may issue a certificate at any time on the basis of the original application on receipt (if necessary) of the fee prevailing when the application was made and an oath of allegiance. In all other cases the applicant will need to re-apply under an appropriate provision of the legislation. (See paragraph 6.8 above)

**B. Applications for British citizenship made on or after 1 January 2004**

- 6.11.13 **Schedule 1 to the Nationality, Immigration and Asylum Act 2003**, which came into force on 1 January 2004, amended the requirements in **s.42** of the 1981 Act relating to the taking of the oath of allegiance.
- 6.11.14 With effect from 1 January 2004, all applicants (except those who are not of full age) are required to make an oath and pledge at a citizenship ceremony before they are registered or naturalised as a British citizen. As an alternative to the oath, applicants may make an affirmation of allegiance (and references below to "oath" include references to "affirmation").

6.11.15 The wording of the oath/affirmation of allegiance is given in paragraph 6.11.4 and 6.11.5 above. However, when the affirmation is being *spoken* (i.e. at a citizenship ceremony), the appropriate words are "...do solemnly, sincerely and truly declare and affirm...". The wording of the pledge is as follows:

"I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen."

6.11.16 From 1 June 2007 prospective British citizens making the citizenship oath (or affirmation) and pledge *in Wales* may, if they wish, do so in the Welsh language. The **Citizenship Oath and Pledge (Welsh Language) Order 2007** contains the approved translations which are as follows:

**Oath of allegiance:**

Llw teyrngarwch

Yr wyf i, (enw), yn tyngu i Dduw Hollalluog y byddaf i, ar ôl dod yn ddinesydd Prydeinig, yn ffyddlon ac yn wir deyrngar i'w Mawrhydi y Frenhines Elisabeth yr Ail, ei Hetifeddion a'i Holynwyr, yn unol â'r gyfraith.

**Affirmation of allegiance:**

Cadarnhau teyrngarwch

Yr wyf i, (enw), yn datgan ac yn cadarnhau yn ddifrifol, yn ddiffuant ac yn gywir y byddaf i, ar ôl dod yn ddinesydd Prydeinig, yn ffyddlon ac yn wir deyrngar i'w Mawrhydi y Frenhines Elisabeth yr Ail, ei Hetifeddion a'i Holynwyr, yn Unol â'r gyfraith

**Pledge**

Adduned

Rhoddaf fy nheyrngarwch i'r Deyrnas Unedig ac fe barchaf ei hawliau a'i rhyddidau. Arddelaf ei gwerthoedd democrataidd. Glynaf yn ffyddlon wrth ei chyfreithiau a chyflawnafl fy nyletswyddau a'm rhwymedigaethau fel dinesydd Prydeinig.

6.11.17 Citizenship Ceremonies Support Team (CCST) is the main contact with local authorities. CCST will liaise with local

authorities in regard to citizenship ceremonies. CCST will deal with any requests to extend, transfer or become exempt from a citizenship ceremony after the case has been approved.

6.11.18 An exemption may be made, in the special circumstances of a particular case, in respect of any or all of the following:

- the requirement to attend a citizenship ceremony
- the requirement to make an oath of allegiance and pledge
- the time limit for attending a ceremony

NB. Exemptions will be granted only in **exceptional** circumstances; for example, when a requirement to attend a ceremony would have national security implications or when an applicant cannot attend due to chronic illness or disability. Any such requests made after the application has been approved should, in the first instance, be referred to CCST who will consider the request and refer it to the Nationality Group Casework Manager.

6.11.19 Even if a person has been exempted from meeting the language requirement for naturalisation, or is being registered as a British citizen (and therefore is not subject to a language requirement), we would still expect him or her to attend a citizenship ceremony. Attendance is consistent with the Government's aim that ceremonies should encourage cohesion and facilitate integration into the local community. Applicants whose ability in English is poor should be encouraged to practice repeating the words of the citizenship oath (or affirmation) and pledge prior to the ceremony.

6.11.20 In England, Scotland and Wales, the registrar of a local authority will conduct the ceremony and administer the oath/pledge. The relevant authority is required to arrange for suitable premises to be made available for the purposes of the ceremony and to conduct ceremonies sufficiently frequently in order for applicants to meet the prescribed time limit for making an oath/pledge. Elsewhere, the ceremony is conducted, and the oath/pledge is administered, by a person authorised by the Secretary of State ("authorised person").

6.11.21 For an explanation of the terms "registrar", "local authority" and "authorised person" see Annex F.

#### 6.11.22 Procedure for ceremonies

6.11.22.1 Where applicants are required to attend a ceremony and make an oath or affirmation of allegiance and pledge, they must normally do so within the time limit of 3 months prescribed by the **British Nationality (General) Regulations 2003**). Otherwise, they cannot be registered or naturalised unless the Home Secretary decides to extend the period.

6.11.22.2 Where it is decided to grant an application for registration or naturalisation, we should notify the applicant in writing of the decision. The ceremony invitation letter, which the applicant should take to the ceremony, should be sent to the applicants last known address, or to his or her representative.

6.11.22.3 The ceremony invitation letter should:

- Advise the applicant to contact the appropriate local authority to arrange attendance at a citizenship ceremony (the letter should contain details of who the applicant should contact to arrange attendance)
- Advise the applicant of the time limit for attending the ceremony
- Enclose the ceremony guidance notes which will confirm what action is required and the oath/affirmation and pledge the applicant will be required to say at the ceremony
- Advise the applicant that the local authority may refuse them permission to take part in the citizenship ceremony if they fail to produce the original ceremony invitation letter when requested on the day of the ceremony

- Advise the applicant that the local authority may require them to produce evidence of identity (including a photograph)

6.11.22.4 We should also notify the relevant local authority or authorised person of the decision in relation to that applicant and enclose the applicant's undated certificate of registration or naturalisation. The notification, which will be generated automatically when "ceremony approved" action is taken on NCID, will explain to the relevant authority that if the applicant fails to attend a ceremony within the prescribed time limit, the certificate should be returned to the Home Office.

6.11.22.5 If the applicant asks for an extension of time and gives an acceptable reason (see 6.11.22.6 below), an extension of up to 3 months may be allowed (or whatever longer period may be justified by the reason given for the request). CCST action these requests.

6.11.22.6 We should normally agree to extend the deadline where:

- the applicant is temporarily abroad (NB. If this is a naturalisation case under **s.6(1)** of the BNA 1981, any absence of 6 months or longer may affect the applicants ability to meet the future intentions requirement and the case should be referred to a Senior Caseworker);
- the applicant (or a close family member) is ill;  
or
- there has been some form of administrative error, either by the Home Office, a Post abroad or the local authority (e.g. the ceremony invitation was not received in time or was sent to the wrong address);

NB. Any request for an extension to this time

limit for more than 6 months, or which is for a different reason, should be referred to the Nationality Group Casework Manager who will consider it in conjunction with NPT.

6.11.22.7 The person conducting the ceremony will:

- administer the oath/pledge; and
- date the certificate of registration/naturalisation with the date of the ceremony and issue it to the applicant at the ceremony; and
- notify the Secretary of State, in writing, within 14 days of the ceremony that the applicant has made the oath and pledge and confirm the date of the ceremony

6.11.22.8 Requests to transfer a ceremony to a different venue must only be dealt with by CCST.

#### Transfers within the UK

6.11.22.9 An applicant has the option to nominate a specific Local Authority. If a specific authority is not indicated the ceremony will be held in the Local Authority nearest to the applicant's UK home address.

6.11.22.10 If the applicant changes address and their new address comes under a different Local Authority, CCST will amend the details accordingly and arrange for the transfer of documents between Local Authorities.

#### Transfers from the UK to abroad

6.11.22.11 The ethos and background relating to citizenship ceremonies is that new citizens are welcomed into their local community. A transfer should therefore only be granted if the applicant has applied for registration or for naturalisation under **s.6(2)** of the BNA 1981 and is outside the UK indefinitely.

If applicants state that they will only be away for a few months, we should consider offering an extension to allow them to attend the ceremony in the UK when they return.

6.11.22.12 CCST will not transfer naturalisation claims under **s.6(1)** as this will cast doubts about whether their future intentions lie in the UK. If a **s.6(1)** applicant states that they will be abroad for more than 6 months, CCST will refer the case to the appropriate Senior Caseworker to check whether the applicant satisfies the future intentions requirement.

6.11.22.13 If an applicant does not attend a citizenship ceremony within the 90 day time limit, the local authority will notify CCST. CCST will then write out to the applicant for an explanation as to why they did not attend the ceremony. If a reasonable explanation is provided CCST will look to extend the deadline (see 6.11.22.6).

6.11.22.14 If an explanation is not provided, the application will be refused. The applicant will be informed that it will not be possible to become a British citizen because the Home Secretary is not able to register or naturalise a person who has not attended a ceremony and taken an oath/pledge.

6.11.22.15 If the applicant still wishes to become a British citizen, and had an entitlement at the date of application, a certificate may be issued at any time on the basis of the original application on payment of the balance of fee and attending a citizenship ceremony and making an oath/pledge.

6.11.22.16 In all other cases, the applicant will need to re-apply under an appropriate provision of the legislation. (See paragraph 6.4 above)

6.11.22.17 If an applicant appeals against the refusal, the case should be referred to the Quality & Correspondence Team who will ensure that the

correct decision was made. If this is the case, the appeal will be rejected.

6.11.22.18 If there has been a Home Office error or the applicant has an entitlement to citizenship, the case will be re-opened.

**NB.** If any other reason is provided where a case may be re-opened, the case should be referred to the Chief Casework Officer who will consider the request in consultation with NPT.

**C. Applications made under the BNAs 1948-1965**

6.11.23 **Section 49** of the 1981 Act, read with **paragraph 1(3)** of **Schedule 8** to the Act, provides that no one who needs to take an oath of allegiance shall be registered or granted a certificate of naturalisation on the basis of an application made before 1.1.83 unless they have taken an oath in the prescribed form and time. This provision came into force on 30 October 1981, the date of the passing of the British Nationality Act 1981.

6.11.24 Prior to 30 October 1981, it was the practice to register or grant a certificate of naturalisation before requesting an oath to be taken. **Paragraph 2** of **Schedule 8** to the 1981 Act therefore provides that anyone who was registered or naturalised before 30.10.81 but had not taken the oath before 1.1.83, shall be treated as if their application had not on that date been determined. This means that a decision has to be re-taken (see 6.6 above).

6.11.25 **Section 9** of the **British Nationality Act 1948**, as amended by **Appendix C** to **Schedule 1** to the **Immigration Act 1971**, explains who is not required to take an oath of allegiance. These are:

- those not of full age
  
- those not of full capacity
  
- citizens of a country of which Her Majesty is Queen (see 6.11.26 below)

- British subjects by virtue of **s.1** of the **BNA 1965**

6.11.26 Countries whose governments recognise the Queen as Head of State are those listed in 6.11.3 above with the exception of St Christopher and Nevis which became independent after 1.1.83.

6.11.27 The form of an oath of allegiance is given in **Schedule 13** to the **British Nationality Regulations 1975**, as substituted by **Appendix A** to the **British Nationality (Amendment) Regulations 1981**, and is set out below:

"I, AB, swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law".

6.11.28 For applicants who wish to affirm rather than swear their allegiance the form of oath is changed by removal of the words "...swear by Almighty God..." and the substitution of "...do solemnly and sincerely affirm..."

6.11.29 An oath of allegiance must be administered and signed by one of the persons listed in paragraph 6.11.7 above.

6.11.30 Where an applicant is required to take an oath of allegiance, he must normally do so within the time limit of 3 months prescribed by the **British Nationality (Amendment) Regulations 1981**. No discretion is given to the Home Secretary to extend this deadline but this could be indicative rather than mandatory. Thus, the procedures set out in paragraphs 6.11.10 - 6.11.12 above should be followed.

6.11.31 The request to take an oath of allegiance should be done manually by sending an oath form as appropriate with the words "...on becoming a..." deleted, under cover of an OATH REQUEST letter. The file should then be almanacked for 2 months and an OATH REMINDER sent with a new oath form if the original oath form has not been received. The letter makes it clear that an oath should have been taken within 3 months and allows a further two months for it to be completed and returned. The file should be almanacked for 2 months.

## 6.12 Registration/naturalisation authority

6.12.1 The power to determine applications for British citizenship, British Overseas citizenship and British subject status is vested solely in the Home Secretary. Except as explained in 6.12.2 below, all applications for British citizenship etc, wherever made, must come to the Home Office to be determined.

6.12.2 Under **s.43** of the British Nationality Act 1981, the Home Secretary may make arrangements for his power to determine applications for British citizenship to be exercised by the Lieutenant-Governors of the Channel Islands and the Isle of Man. The Home Secretary has arranged for the following functions to be exercised by Lieutenant-Governors:

- The effecting of all registrations as British citizens
- The granting of certificates of naturalisation as British citizens, but only with his approval. This is normally signified by counter-signature on the certificate

6.12.3 Where an application is received from someone who is temporarily in the United Kingdom, but normally lives on one of the Channel Islands or the Isle of Man, the application form and any other papers sent in support of the application should be sent, as appropriate, to either

- the Passport and Immigration Office, Prospect House, 27-29 Prospect Hill, Douglas, Isle of Man, IM1 1ET, or
- the Passport Office, Maritime House, La Route du Port Elizabeth, St Helier, Jersey, JE1 1JD, or
- (if the applicant lives on any other Channel Island) the Immigration & Nationality Division, PO Box 417, White Rock, St Peter Port, Guernsey, GY1 3WJ

6.12.4 The applicant should be advised that the application has been transferred. It is not necessary to process the application in any other way. If a personal file has already been raised, it should be laid by.

6.13 **Effective date of registration or naturalisation**

A. Applications made before 1 January 2004

6.13.1 **Section 42(4)** of the 1981 Act, as in force prior to 1 January 2004, explains that a person registered as a British citizen becomes such a citizen on the date he or she is registered.

6.13.2 **Section 42(5)** of the 1981 Act, as in force prior to 1 January 2004, explains that a person to whom a certificate of naturalisation as a British citizen is granted becomes such a citizen from the date the certificate is granted.

6.13.3 **Schedule 8** to the 1981 Act, read with **s.49**, makes similar provision for persons registered or naturalised on the basis of an application made before 1.1.83.

B. Applications made on or after 1 January 2004

6.13.4 **Section 42** was amended by **Schedule 1** to the **Nationality, Immigration and Asylum Act 2002** with effect from 1 January 2004.

6.13.5 **Section 42B(1)** of the 1981 Act, as amended, explains that a person registered as a British citizen becomes such a citizen:

- a. immediately on making the required oath and pledge; or
- b. where the oath/pledge requirement is waived, the date on which he or she is registered

6.13.6 **Section 42B(2)** of the 1981 Act, as amended, explains that a person to whom a certificate of naturalisation as a British citizen is granted becomes such a citizen:

- a. immediately on making the required oath and pledge; or
- b. where the oath/pledge requirement is waived, the date on which the certificate is granted

6.14 Judicial Review

The Law

6.14.1 **Section 44(1)** of the British Nationality Act 1981 explains that any discretion given to the Secretary of State, a Governor or Lieutenant-Governor by or under the Act must be exercised without regard to the race, colour or religion of the person who may be affected by its exercise.

6.14.2 **Section 44(2)** of the British Nationality Act 1981 explained that:

- the Secretary of State, a Governor or a Lieutenant-Governor was not required to give a reason for the grant or refusal of an application under the Act if the decision on the application was at his discretion; and
- the decision on any such application would not be subject to appeal to, or review in, any court

6.14.3 **Section 44(3)** of the British Nationality Act 1981 explained that nothing in **s.44(1)** or **s.44(2)** affected the jurisdiction of any court to conduct proceedings of any kind about the rights (e.g. an entitlement to registration) of any person under any provision of the Act.

6.14.4 However, **ss.44(2)** and **(3)** were repealed on 7 November 2002 by the **Nationality, Immigration and Asylum Act 2002** and we are now required to give the reason(s) for refusal in all cases.

6.14.5 **Section 44** of the 1981 Act applies to the **1983 Act** and to the **1996 Act** (but with the exception of **subsection (3)**, when it was in force). In dealing with applications under the 1981, **1983** and **1996 Acts**, we must always bear in mind that our actions and decisions may be challenged in the courts.

6.14.6 It is always open to a person who is dissatisfied with our decision in his or her case to ask a court to review it on the grounds that we acted unlawfully, improperly or unreasonably. The process by which a court does this is called judicial review.

#### The main principles

6.14.7 The main principles we need to bear in mind are:

- We cannot refuse to accept an application
- While we may adopt a general policy on the way we would expect to exercise discretion, we must in each case consider, and show that we have considered, whether there are grounds for acting outside these guidelines (either by grant or refusal) and so exercising the Secretary of State's discretion to the full (i.e. he cannot "fetter his discretion")
- We must make our own independent judgement on the current application; we cannot rest our decision on a previous application or a decision made in the context of an immigration application

#### Caseworking practice

6.14.8 In each case we must therefore:

- take into account all the relevant factors; and
- not take into account irrelevant factors (for example that an applicant under **s.6(2)** of the 1981 Act cannot speak English); and
- take into account any representations made from whatever source

6.14.9 This does not mean that we must seek grounds for acting exceptionally. Generally speaking, we should be guided by what is already on the papers. If no grounds have been put forward for treating a case exceptionally, then we need not normally ask the applicant to provide them.

#### Letters to applicants and agents

6.14.10 While we need to consider the context of each case, as a general rule we should not use phrases like:

- "We are not prepared to entertain your application"
- "We are not prepared to consider your application"

- "You will not be eligible to apply until a certain date"
- "You will not be eligible to apply until you have met all the requirements of the Act"
- "You do not fulfil the criteria for the exercise of discretion and therefore your application is refused"
- "As the Immigration Appeal Tribunal found that your marriage/civil partnership was not valid/you were not related as claimed, you are not eligible for naturalisation as the wife/civil partner of a British citizen"

6.14.11 What we should say will depend on the circumstances of the application and the nature of the enquiry. In some cases it may be right not to give detailed reasons for decisions. Where we do so, however, we need to be careful about the wording. The sorts of phrases which might be used are:

- "An application made before a certain date is unlikely to be successful"
- "Taking into account the requirements of the Act, you may wish not to apply until after ....."
- "While it is open to you to apply if you so wish, in view of ..... it is unlikely that an application made now/made before a certain date would be successful"
- "The Secretary of State has carefully considered whether he should exercise discretion in your case but has decided there are not sufficient grounds for doing so. Your application is therefore refused"
- "The Secretary of State has carefully considered the points you have made, but has decided that there are not sufficient grounds for exercising discretion in your case. Your application is therefore refused"
- "The Secretary of State expects ..... he has considered whether it would be right to make an exception"

to the normal practice in your case, but has concluded that there are not sufficient grounds to justify our doing so. Your application is therefore refused"

- "One of the statutory requirements (which the Secretary of State has no power to set aside) is that an application should ..... (in view of .....) he is not satisfied that you meet this requirement and your application is therefore refused"
- "The Secretary of State is not satisfied that your marriage or civil partnership is valid in English law/that you have established that you are married to/civil partner of a British citizen. Your application for naturalisation as the wife/husband/civil partner of a British citizen is therefore refused"

6.14.12 These examples are not intended to cover every, or any, particular case. Their aim is to help us in looking carefully at our actions or decisions to make sure that, as far as possible, they do not unwittingly leave us open to a successful challenge in the courts or elsewhere.

#### 6.15 **Disclosure of information**

6.15.1 Comprehensive guidance on all aspects of the handling, protection and disclosure of official information may be found in Chapter 24 of the Immigration Directorates' Instructions (IDIs). This is accessible via the Knowledge Base and, in a less complete version, the Border and Immigration Agency website. A hard copy is retained by NPT.

6.15.2 NPT should be consulted where it is unclear how the IDIs guidance ought to be applied in the nationality context or where situations arise which appear not to be covered at all by the guidance. In these cases, the referring senior caseworker should specify, where appropriate, the particular section or paragraph of the IDIs that is causing difficulty.

#### 6.16 **Stock forms and letters**

6.16.1 A set of computerised stock forms and letters has been designed for use in the more common or regularly occurring

circumstances that arise from the work of the Agency. Before drafting a letter, the list of stock letters should be consulted to see if there is one that is suitable for the purpose.

6.17 **Information leaflets**

6.17.1 A set of leaflets has been produced to explain the various provisions of the British Nationality Act 1981 and the **British Nationality (Falkland Islands) Act 1983**. These are primarily intended for issue to the public, but they provide a quick and simple means of explaining the Acts to ourselves and colleagues in other Departments.

6.17.2 The leaflets are listed numerically in Annex B.